

facts in dispute, and judgment may be rendered by considering the substance of the pleadings and any judicially noticed facts. Horsley v. Rivera, 292 F.3d 695 (11th Cir. 2002). Such a motion should only be granted when there are no facts that a plaintiff can prove to support his claim for relief. Horsley v. Feldt, 304 F.3d 1125 (11th Cir. 2002).

Given that there are factual disputes acknowledged in Defendant's and Plaintiffs' briefs concerning the actual payoff dates and amounts, it is not appropriate to decide the issue on a motion for judgment on the pleadings. This is especially true, considering the fact that the discovery schedule specifically takes into account that Defendant may directly attack Plaintiffs' claim early in this litigation after a minimum of discovery. Accordingly, Defendant's motion for judgment on the pleadings (Doc. No. 8) is **DENIED**.

Defendant also moves for judgment on the pleadings on Plaintiff's class allegation. As stated previously, the Court has already denied without prejudice Plaintiff's motion for preliminary class certification. As stated previously discovery is limited in Phase I to discovery of the Plaintiffs' claim and to whether they should be class representatives. As such, Defendant's motion for judgment on the pleadings on this ground is premature. Accordingly, Defendant's motion for judgment on the pleadings (Doc. No. 11) is **DENIED without prejudice**.

SO ORDERED, this 28th day of March, 2008.

/s/W. Louis Sands
W. LOUIS SANDS, JUDGE
UNITED STATES DISTRICT COURT